

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. _____

STATE OF MONTANA ex rel.
GEORGE HAROLD HOLT,

Defendant and Petitioner,

-VS-

DISTRICT COURT OF THE TWENTY-FIRST
JUDICIAL DISTRICT OF THE STATE OF
MONTANA, COUNTY OF RAVALLI, THE
HONORABLE JEFFREY H. LANGTON, Presiding,
and SENTENCE REVIEW DIVISION OF THE
SUPREME COURT OF MONTANA, THE HONORABLE
RICHARD G. PHILLIPS, Chairman,

Respondents.

APPLICATION FOR WRIT OF SUPERVISORY CONTROL

From The District Court Of The
Twenty-First Judicial District Of The State Of Montana
In And For The County Of Ravalli
and
Sentence Review Division Of
The Supreme Court Of The State Of Montana

DAVID E. STENERSON
Stenerson Law Office
210 South Third Street
P.O. Box 210
Hamilton, MT 59840

ATTORNEY FOR DEFENDANT
AND PETITIONER

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. _____

STATE OF MONTANA ex rel.
GEORGE HAROLD HOLT,

Defendant and Petitioner,

-vs-

DISTRICT COURT OF THE TWENTY-FIRST
JUDICIAL DISTRICT OF THE STATE OF
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HONORABLE JEFFREY H. LANGTON, Presiding,
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RICHARD G. PHILLIPS, Chairman,

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APPLICATION FOR WRIT OF SUPERVISORY CONTROL

INTRODUCTION

The Petitioner, GEORGE HAROLD HOLT, seeks issuance by this Court of a Writ of Supervisory Control, or other appropriate writ, on behalf of Petitioner, for the purpose of reversing the District Court's finding and the Sentence Review Division's opinion and Order that a person must be in actual custody in order to seek review of a sentence before the Sentence Review Division of the Montana Supreme Court.

The rulings for which review is sought are two letters of legal findings from Twenty-First Judicial District Court Judge

Jeffrey H. Langton dated October 21, 1999, and October 28, 1999, and an Order of the Sentence Review Division of the Montana Supreme Court dated November 29, 1999. The opinion letters from Judge Langton and counsel's reply letter are attached as EXHIBIT A. The Sentence Review Division Order is attached as EXHIBIT B.

STATEMENT OF PROCEDURAL HISTORY

The Petitioner, GEORGE HAROLD HOLT (Holt), was charged by Information with the offenses of sexual assault, a felony (2 counts); sexual abuse of children, a felony; and, tampering with witnesses and informants, a felony, on December 3, 1998, in the Twenty-First Judicial District, Ravalli County, Montana. Jury trial commenced on May 10, 1999. Following the State's case in chief, defense counsel moved for, and was granted, a directed verdict of acquittal in regard to the tampering with witnesses allegation. On May 11, 1999, during the second day of trial, counsel and Holt met in chambers with Judge Langton concerning admittance of evidentiary matters relating to an uncharged allegation of a similar nature some thirty (30) years prior. Following discussion, Holt agreed to enter an **Alford** type plea to Charge I, Count I, sexual assault, a felony. In return for this plea, the State agreed to dismiss all remaining charges. The oral agreement was premised on the agreement that the State would not recommend incarceration for the 84-year-old Holt at sentencing. No other agreement was reached in regard to

sentencing. The entry of plea and dismissal of remaining charges took place that day.

On September 29, 1999, Holt was sentenced to imprisonment in the Montana State Prison at Deer Lodge, Montana, for a period of ten (10) years, said sentence to be suspended [on conditions (a) through (x)]. **Judgment, EXHIBIT C.**

On October 13, 1999, court appointed counsel requested an Order authorizing payment to Jeffries Court Reporting, Inc., for preparation of the transcript of sentencing for purposes of Sentence Review. **EXHIBIT D.** The Court originally granted the request of counsel on October 15, 1999, but on October 21, 1999, stayed that Order **(EXHIBITS E AND F)** for the reasons stated in letters attached as **EXHIBIT A.**

Holt applied for review of his sentence November 1, 1999.
EXHIBIT G. Holt's application was denied November 29, 1999.
EXHIBIT B.

ISSUE PRESENTED

Holt seeks this extraordinary relief on the basis that denial of a review of his sentence results in deprivation of both liberty and property without due process of law and that the District Court and Sentence Review Division of the Montana Supreme Court misinterpreted statutory and administrative laws or rules in denying Holt a review of his sentence for equity and fairness. In the event this Court finds such interpretations to

be correct, Holt requests this Court find such statutes and rules governing the sentence review process providing that a person must be in custody in order for a sentence to be reviewed to be violative of due process and equal protection clauses of the constitutions of Montana and the United States.

SUMMARY OF ARGUMENT

Mont. Code Ann. § 46-18-903 (1) provides that "[A]ny person sentenced to a term of 1 year or more in the state prison . . . may within 60 days from the date such sentence was imposed, . . . file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division." **Rule 1, Rules of the Sentence Review Division**, provides in pertinent part that "[A]fter notice and within sixty (60) days after a defendant is sentenced to a term of one year or more in the State Prison, the defendant may apply to have his sentence reviewed" Holt was sentenced to ten (10) years in the State Prison, but all of those years were suspended on a laundry list of conditions. Those conditions restrict Holt's liberty and property rights.

Neither **Mont. Code Ann. § 46-18-903** nor **Rules of the Sentence Review Division** prohibit a review of a wholly suspended sentence. While it would be a rare occasion for a defendant granted a probationary sentence to complain of its disparity, inequity or unfairness, there should be no prohibition against

doing so without explicit statutory provision. The interpretation of the District Court and the Sentence Review Division that a defendant is eligible for a review of sentence when sentenced to a term of one year or more in the State Prison requires actual, physical incarceration, is incorrect. Holt was sentenced to a term of years in the State Prison. That sentence, though suspended, subjects Holt to the possibility of incarceration and ongoing deprivation of liberty and property rights while on probation. There exists no provision of law or administrative rule that states a defendant is eligible for sentence review upon a sentence in the State Prison for one year or more and the defendant must be actually locked up.

There is no question that a probationer's liberty interests are severely diminished during the probationary period. In the present case, Holt, in addition to being under the supervision of the Department of Corrections and standard conditions of probation, is prohibited from possessing firearms, certain electronic equipment or alcoholic beverages. He must submit to searches of his bodily fluids, his person and his residence without warrant. Employment and association freedoms are curtailed. Holt was also required to vacate his residence and relocate. The threat of loss of physical liberty is ongoing for the period of probation. It is undisputed that a probationer has a reduced privacy interest. **Morrissey v. Brewer**, 408 U.S. 471,

92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). A reduced privacy right necessarily goes hand-in-hand with reduced liberty. Holt's liberty, though not taken from him entirely, is conditional, unlike the population at large.

Due process, by simple definition, means fundamental fairness. A review of a sentence by the Sentence Review Division is a right conferred on a defendant convicted of a felony in the State of Montana by statute and is therefore part of the sentencing procedural process enacted by the Montana Legislature. By allowing for suspension of a sentence in its entirety, (Mont. Code Ann. § 46-18-201(2)), the legislature, in effect, creates at least two separate classes of convicted felons -- those who are sentenced to physical custody and those who remain in the community with conditional liberty. Both classes of individuals are sentenced to terms in the State Prison. It has been held that both equal protection and due process:

"call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system -- all people charged with crime must so far as the law is concerned, 'stand on an equality before the bar of justice in every American court', *Chambers v. Florida*, 309 U.S. 227, 241 [60 S.Ct. 472, 479, 84 L.Ed. 716]. See also *Yick Wo v. Hopkins*, 118 U.S. 356, 369 [6 S.Ct. 1064, 1070, 30 L.Ed. 220]."

Cited in State *v. Farrell*, 207 Mont. 483, 676 P.2d. 168, 41 St.

Rptr. 91 (1984). The classes of convicted persons in Chambers were indigent defendants as opposed to defendants who could pay for counsel and fines. Due process claims, however may override considerations of equal protection in gauging the constitutionality of sentencing procedures. **Bearden v. Georgia, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).** There, the Court noted that the fairness of relations between the State and a defendant are generally analyzed under the Due Process Clause, while questions whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants is analyzed generally under the Equal Protection Clause. **Farrell, supra, at 175 P.2d.**

Article **II**, § 17 of the Montana Constitution provides that "[N]o person shall be deprived of life, liberty, or property without due process of law." Here, due process includes the right to have an inequitable sentence reviewed by the Sentence Review Division.

It would be Holt's argument before the Sentence Review Division that the length of the sentence, the type of sentence, the sexual offender category designation and many of the conditions of probation set forth in the judgment are either unfair, disparate or inequitable under his particular circumstances. The merits of any argument before the Sentence Review Division will not be addressed in this application. Only

the right to appear before the Sentence Review Division is at issue here.

Article II, § 4 of the Montana Constitution provides that "[T]he dignity of the human being is inviolable. No person shall be denied the equal protection of the law. Neither the state, nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." Where an incarcerated convicted felon is afforded the right to have a sentence reviewed, and a convicted felon whose social condition is that of a probationer is denied such review, that person is not treated equally under the law.

It is Holt's argument in this Application for Supervisory Control that he was sentenced to a term of years in the State Prison and that suspension of actual incarceration should not result in denial of a review of what Holt maintains are disparate, unfair or inequitable provisions of the sentence imposed. If Holt is denied a review of his sentence, he cannot challenge any such contention of inequity and must therefore suffer under a possibly unjust sentence for the term of probation. The only chance at a review of his sentence would be in an unlikely instance involving a sentence upon revocation of probation. If Holt is successful at sentence review, conditions

that could result in probation violations might not even be in existence in the judgment. A sentence review of a sentence upon revocation would not result in a review of the original sentence, only the sentence imposed at revocation. The result of this scenario is that any defendant in these circumstances is left with no recourse to challenge inequities in an otherwise legal sentence, which is contrary to the express primary objective of the Sentence Review Division contained in **Rule 16, Rules of the Sentence Review Division.**

This Court has determined that a review of sentence as prescribed in the statutes and rules of this State is a critical stage of the prosecution. **Ranta v. State, 1998 M1 95, ¶¶ 21 and 22, ___ Mont. ___, ¶¶ 21 and 22, 958 P.2d 670 ¶¶ 21 and 22.** Sentence review for a person not incarcerated, but nonetheless under a sentence in the State Prison, and suffering loss of liberty and property can be no less critical than for persons actually incarcerated.

REQUISITES FOR EXTRAORDINARY RELIEF

Holt does not challenge the legality of his sentence, only the fairness, equity or parity of the judgment imposed. Under Montana law, the venue for arguments of that nature is in the Sentence Review Division, precluding appeal of the sentence to this Court. A petition for extraordinary relief to the Supreme Court is the proper mechanism for challenging a decision of the

Sentence Review Division. **Ranta, supra, ¶¶ 11 and 12.**

This Court has provided a three-part test for determination of assumption of original jurisdiction regarding applications for writs for extraordinary relief. **State ex rel. Gould v. Cooney**, 253 Mont. 90, 831 P.2d 593 (1992), in accord with **Butte-Silverbow Local Gov. v. State**, 325 Mont. 398, 768 P.2d 327 (1989) ; **Forsyth v. District Court**, 216 Mont. 480, 701 P.2d 1346 (1985), and **Crist v. Boyd** 172 Mont. 38, 560 P.2d 531 (1976). In essence, the three prongs that must be satisfied for successful application for such relief are: (1) a finding that the case involves constitutional issues of statewide importance, as well as, (2) pure legal questions of statutory and constitutional construction, and that (3) urgency and emergency factors exist making the normal appeal process inadequate.

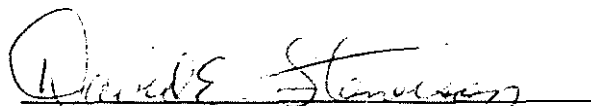
Holt here presents issues relating to due process and equal protection in regard to the availability of sentence review to a defendant who is not incarcerated, affecting defendants and courts statewide. In addition, results of this application will depend entirely on legal questions of statutory and constitutional language and interpretation of that language. Finally, the normal appeal process is unavailable to Holt as a matter of law because he challenges not the legality of his sentence, but the fairness, parity or equity of his sentence. While Holt believes he meets all three prongs of this barometer

of acceptance of a writ for extraordinary relief, it is not necessary that all three be met. ***Plumb v. Fourth Judicial District Court***, 279 Mont. 363, 927 P.2d 1011 (1996). Holt should be allowed a review of his sentence as a matter of statutory interpretation, due process or equal protection considerations.

PRAYER

Petitioner requests this Court grant a Writ of Supervisory Control, or other appropriate writ, ordering the reversal of the trial court's determination that a person must be incarcerated to be eligible for a review of sentence and the reversal of the Sentence Review Division's Order denying review of sentence based upon the same premise, on the grounds that Holt's constitutional right to due process and equal protection have been violated or that he is entitled by law to sentence review through interpretation of existing law.

Respectfully submitted this 15th day of December, 1999.



David E. Stenerson
Stenerson Law Office
Attorney for George H. Holt
210 South Third Street
P.O. Box 210
Hamilton, MT 59840
(406) 363-4060


CERTIFICATE OF SERVICE

This is to certify that the foregoing APPLICATION FOR WRIT OF SUPERVISORY CONTROL was duly served upon the following by mail, postage prepaid, on the 15th day of December, 1999.

Hon. Jeffrey H. Langton
District Judge
Montana Twenty-First Judicial District
Ravalli County Courthouse
205 Bedford
Hamilton, MT 59840

Hon. Richard G. Phillips, Chairman
Sentence Review Division
Richland County Courthouse
201 West Main Street
Sidney, MT 59270

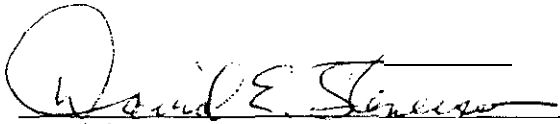
Sentence Review Division
Supreme Court of the State of Montana
Room 315, Justice Building
215 North Sanders
Helena, MT 59620



Diane K. Stenerson
Legal Assistant
Stenerson Law Office

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Application for Writ of Supervisory Control is printed with a monospace 12 point Courier typeface having 10 characters per inch, is double spaced and does not exceed 20 pages, excluding Certificate of Service and Certificate of Compliance.



David E. Stenerson
Attorney for Defendant/Petitioner

EXHIBITS



STATE OF MONTANA TWENTY-FIRST JUDICIAL DISTRICT
RAVALLI COUNTY

JEFFREY H. LANGTON
DISTRICT COURT JUDGE

RAVALLI COUNTY COURTHOUSE
COURTHOUSE BOX 5012
HAMILTON, MONTANA 59840
PHONE: (406) 375-6241 FAX: (406) 375-6382

October 21, 1999

David E. Stenerson
Attorney at Law
P.O. Box 210
Hamilton, MT 59830

Re: State of Montana v. **Holt**
Ravalli County Cause No. DC-98-1 75

Dear Mr. Stenerson:

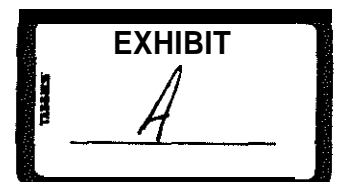
While preparing the Judgment in the *Holt* case, and after having approved your request for a sentencing transcript for "Sentence Review," it has occurred to me that Mr. **Holt** has no right to such review by the Sentence Review Division since he has not been sentenced to prison or the D.O.C., but rather received a probationary sentence. I have stayed the transcript order pending your reply. Since you voiced no objection to the legality of the sentence at the sentencing hearing, I am uncertain what sort of "Sentence Review" you are seeking.

Sincerely,



JEFFREY H. LANGTON,
District Judge

JHL:cmt



STENERSON LAW OFFICE

David E. Stenenon,
Attorney at Law

Diane K. Stenenon,
Legal Assistant

210 South Third Street
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Hamilton. MT 59840
Telephone (406) 363-4060
FAX (406) 375-0339

October 25. 1999

Jeffrey H. Langton
District Judge
Ravalli County Courthouse
Hamilton. MT 59840

RE: *State v. Holt*, Cause No. DC-98-175

Judge Langton:

I have received your letter of October 21, 1999, and have looked into the statutes and case law involving sentence review. I respectfully disagree with the analysis that because Mr. Holt's sentence was suspended in its entirety, such suspension precludes him from having the sentence reviewed. **Mont. Code Ann. §46-18-903** allows that anyone sentenced to a term of one year or more in the state prison may apply for review of that sentence. I can find no provision that precludes a review if that sentence is suspended.

If a person with a suspended sentence was precluded from review of that sentence, and violated a condition of probation and was incarcerated after the 60-day period for applying for sentence review expired, that person would be serving time on a sentence that may have been altered prior too the revocation. Such a scenario would deprive that person of the right to sentence review as provided by statute, with no recourse to appeal because time periods for both appeal and review would have lapsed.

I also respectfully disagree with the second part of the analysis that relates to objection to the legality of the sentence and appears to indicate that Mr. Holt would need to seek review of his sentence on that issue. The Montana Supreme Court has often distinguished the issue of appellate review of a sentence and application for sentence review. The Court is consistent in its holdings that the Supreme Court will hear on appeal issues regarding the legality of a sentence. but the Sentence Review Division is the proper and only forum in which to address the inequity of a sentence.

A defendant has the right to have his sentence reviewed for equity, disparity, or

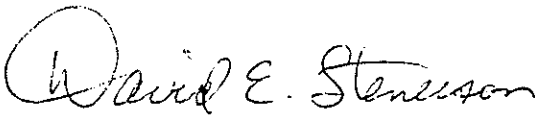
Jeffrey H. Langton
October 25, 1999
Page two

considerations of justice by the Sentence Review Board. State *ex ref. Greely v. District Court*, 180 Mont. 317,590 **P.2d 1104, 36** St. Rptr. 161 (1979). A defendant has the right to appeal his sentence to the Montana Supreme Court to determine its legality. *Greely, supra.*, citing *State v. Simtob*, 154 Mont. 286,462 **P.2d 873** (1961). Challenges to the equitability of a sentence. as opposed to its legality, are properly directed to the Sentence Review Board. *State v. Metz*, 184 Mont. 533,604 **P.2d 102, 36** St. Rptr. 2261 (1979). Sentences are not reviewed on appeal for mere inequity -- only for their legality. *State v. Lloyd*, 208 Mont. 195,676 **P.2d 229, 41** St. Rptr. 263 (1984). Review of a sentence properly lies with the Sentence Review Division. *State v. Valcourt*, 254 Mont. 174,835 **P.2d 835, 49** St. Rptr. 686 (1992). [T]his court will only review sentences for their legality. We will not review sentences for mere inequity or disparity; that task is left to the Sentence Review Division. *State v. Ford*, 278 Mont. 363, 926 **P.2d 245** (1996).

I would agree that seeking sentence review of a wholly suspended sentence is a rarity, but I do recall Amy Guth, Esq., representing a person in the same situation. Unfortunately, I do not have the name of that defendant, but would likely be able to produce that case name if necessary.

In sum. I am unable to find case law that clearly states that a defendant who receives a suspended sentence is precluded from having that sentence reviewed by the Sentence Review Division. Absent a clear determination, I believe the plain language of Mont. Code Ann. § 46-18-903 should control. That language does not appear to require incarceration, only a sentence to MSP of one year or more. Secondly, it is clear that the legality of a sentence must be addressed by appeal to the Montana Supreme Court, while the equity or other considerations of a sentence rests with the Sentence Review Division.

Sincerely,


David E. Stenerson



STATE OF MONTANA TWENTY-FIRST JUDICIAL DISTRICT

RAVALLI COUNTY

JEFFREY H. LANGTON
DISTRICT COURT JUDGE

October 28, 1999

RAVALLI COUNTY COURTHOUSE
COURTHOUSE BOX 5012
HAMILTON, MONTANA 59840
PHONE: (406) 375.6241 FAX: (406) 375-6382

David E. Stenerson
Attorney at Law
P.O. Box 210
Hamilton, MT 59840

Re: State of Montana v. Holt
Ravalli County Cause No. DC-98-1 75

Dear Mr. Stenerson:

In reply to your letter of October 25, 1999, my understanding and the policy of the Sentence Review Division to date, is that § 46-18-903, M.C.A. is only applicable to defendants sentenced to a prison term (or other type of D.O.C. commitment) whereby the Defendant is actually taken into custody. My review of the law and cases as well as the law and cases of Massachusetts, Connecticut and Maine, upon which our law is based, simply reinforce that conclusion.

Your concern that a revoked probationer is denied a right to sentence review ignores both the Division's rules and practice. Rule 2 of the *Sentence Review Rules* specifically provides, in relevant part, as follows:

"Service [of the judgment of commitment and sentence review forms] shall also be made when a deferred or suspended sentence is revoked and the defendant is sentenced to more than one (1) year in the State Prison."

Rule 7 makes it clear that the time window for filing an application is 60 days after a qualifying sentence is imposed and this, read with Rule 2, is applicable to a prison or D.O.C. commitment after revocation.

I can tell you from the experience of two years on the Division that sentence reviews following revocation of probationary sentences resulting in a prison or D.O.C. commitment are common and in fact are a high percentage of the Division's caseload,

received
10-29-99 dls

David Stenerson
October 28, 1999
Page Two

I fail to follow your comment about the legality of Mr. Holt's sentence. I am aware that a defendant has a right to direct appeal of an illegal sentence. My point is that you have not alleged any illegality in the sentence. Since you have not alleged any illegality in the sentence which could lead to a direct appeal, and since it is clear to me that Mr. Holt has no right to review of the sentence by the Sentence Review Division, I am of the opinion Mr. Holt has no need of a sentencing transcript at public expense. Furthermore, your appointment as Mr. Holt's counsel has now ended unless you intend to file a direct appeal which you apparently do not intend to do.

If you wish to pursue this issue, I suggest you enter into some private arrangement with Mr. Holt to do so and then apply to the Division for leave to seek Sentence Review. I will, of course, recuse myself from consideration of that application. The Division can then formally rule on Mr. Holt's eligibility, and, in the event you fail to effect a change in policy, you may then pursue your theory in the Supreme Court if you wish by extraordinary writ. Again, it is my position that this all would be outside the scope of your appointment as Mr. Holt's counsel and it would not be compensable by Ravalli County unless you prevail upon the Division and/or the Supreme Court to reinterpret the statute as you wish it to be interpreted. In any event, no transcript would be necessary to resolve the jurisdictional issue.

Sincerely,



JEFFREY H. LANGTON,
District Judge

JHL:ct

c: Hon. Richard Phillips
Hon. Margaret Johnson
Hon. Joseph Mazurek
Mr. George Corn

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

* * * * *

The District Court of the 21st Judicial District.
County of Ravalli.

STATE OF MONTANA,)	
)	
Plaintiff,)	NO. DC-98-175
)	
-vs-)	ORDER
)	
GEORGE H. HOLT,)	
)	
Defendant.)	

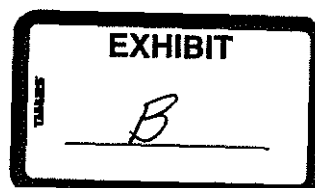
On September 29, 1999, the Honorable Jeffrey H. Langton sentenced Defendant George H. Holt (Holt) to ten (10) years in the Montana State Prison; his sentence was suspended in its entirety.

On November 1, 1999, Defendant Holt filed an Application for Review of Sentence with the Ravalli County Clerk of Court.

Section 46-I 8-903 (1), MCA, provides in pertinent part that

[a]ny person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed...file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. [Emphasis added.]

Holt's sentence in DC-98-175 does exceed one year, however, his sentence was suspended in its entirety and it involved no actual incarceration. Therefore, Holt does not qualify for sentence review; sentence review is applicable only to defendants sentenced to a prison term (or other type of D.O.C. commitment) whereby the defendant is actually taken into custody.



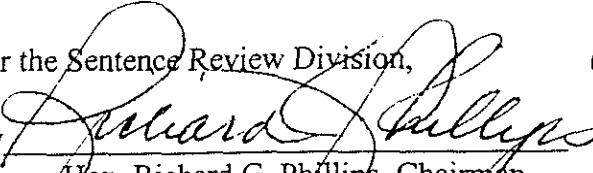
Therefore, pursuant to §46-18-903(1), MCA, Holt's suspended sentence is not applicable for review under the Sentence Review Division. Accordingly,

IT IS ORDERED that Defendant Holt's Application for Review of Sentence is DENIED and the same is hereby DISMISSED.

DATED this 29th day of November, 1999

For the Sentence Review Division,

By

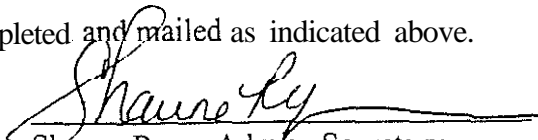

(Hon. Richard G. Phillips, Chairman)

The Honorable Robert Boyd sitting for the Sentence Review Division in the place of the Honorable Jeffrey H. Langton who deems himself disqualified.

Copies mailed this 1st day
of December, 1999, to:

Defendant
Defense Attorney
County Attorney
Clerk of District Court
Board of Pardons and Parole
DOC/MSP • Records Dept.

I certify that the foregoing Order was completed and mailed as indicated above.


Shauna Ryan, Admin. Secretary
Sentence Review Division

HON. JEFFREY H LANGTON
District Judge
Twenty-First Judicial District
Ravalli County Courthouse Box 5012
205 Bedford
Hamilton, Montana 59840
Telephone: (406) 375-6241
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FILED
DEBBIE HARMON, CLERK
OCT 21 1999
Judy K. Rouse
DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

GEORGE HAROLD HOLT,

Defendant.

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Cause No. DC-98-175 /

JUDGMENT

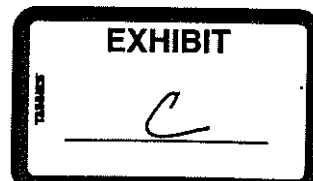
After leave granted by this Court, a criminal Information was filed on December 3, 1998, by the County Attorney for Ravalli County as attorney for the State of Montana, charging the Defendant with:

Charge I:

SEXUAL ASSAULT, a Felony, (Count 1), in violation of Section 45-5-502 M.C.A., committed on or about November 3, 1998;

SEXUAL ASSAULT, a Felony, (Count 2), in violation of Section 45-5-502 M.C.A., committed on or about or between the month of October, 1997, and November 2, 1998.

JUDGMENT



PAGE 1

Charge II:

SEXUAL ABUSE OF CHILDREN, a Felony, (1 Count), in violation of Section 45-5-625

(1) (a), **M.C.A.**, committed on or about or between the month of October, 1997, and November 2, 1998.

Charge III:

TAMPERING WITH WITNESSES OR INFORMANTS, a Felony, in violation of Section

45-7-206, **M.C.A.**, committed on or about or between the month of October, 1997, and November 2, 1998.

The Defendant was arraigned on December 23, 1998, and was advised of the nature of the charges against him, of the maximum sentence in case of a plea or verdict of **guilty**, and of his constitutional rights. The Defendant was provided with a **true** copy of the Information filed against **him**.

The Defendant was represented by David **Stenerson**, Esq., as **counsel**, and entered a plea of not **guilty** to the above criminal charges on December 23, 1998. The case was then set for **trial**.

A trial by jury commenced on May 10, 1999.

On May 11, 1999, **during** the second day of trial Counsel and the Defendant met in chambers. After some **discussion** the Defendant withdrew his not **guilty** plea as to Charge I, Count 1, and pled **guilty** to SEXUAL ASSAULT, a Felony, in the form of an **Alford** Plea. The Court found a **factual** basis for the guilty plea, that the plea was knowingly, voluntarily and intelligently entered, and accepted the plea. The State moved to dismiss the Charge I, Count 2, SEXUAL ASSAULT, a Felony, Charge **II**, SEXUAL ABUSE OF CHILDREN, a Felony, and

Charge **III**, TAMPERING WITH WITNESSES OR **INFORMANTS**, a Felony, and the Court so ordered

The Defendant appeared on September **29, 1999**, and was asked **if he** had any legal cause to show why sentence and judgment of the Court should not be imposed at that time, and the Defendant replied in the negative.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the Defendant, **GEORGE HAROLD HOLT**, is **guilty** of the crime of
SEXUAL ASSAULT, a Felony;
2. That the Defendant shall be imprisoned in the Montana State Prison at Deer
Lodge, Montana, for a period of ten (10) years, said sentence to be suspended on
the following conditions:
 - (a) That the Defendant shall be under the supervision of the Department of
Corrections of the State of Montana and shall obey all rules of probation;
 - (b) That the Defendant **shall** pay a probationary supervision fee of \$10.00 per
month or **\$120.00** per year, pursuant to § 46-23-10, MCA, on a schedule
to be determined by the Probation **Officer**;
 - (c) That the **Defendant** shall pay the statutory surcharge fee in the amount of
\$20.00, and the **victim/witness** surcharge fee in the amount of \$10.00;
 - (d) That the Defendant shall pay the Court Information **Technology** Fund fee
in the amount of **\$5.00**;
 - (e) That the Defendant shall repay the costs of the public defender/Court-
appointed counsel in the amount of **\$6,149.00**;
 - (f) That the Defendant **shall** pay for any and all counseling costs arising **from**
his offense, including transportation, accrued by the **victim**;
 - (g) That the Defendant **shall** make all of the above payments to the Clerk of
District Court of **Ravalli** County, 205 Bedford, Hamilton, MT 59840. All
financial obligations under this Judgment should be paid **from** the sale

proceeds of the Defendant's mobile home on a schedule to be determined by the Probation **Officer**.

- (h) That the Defendant shall obey all city, county, state and federal laws, all current court orders, and shall conduct himself as a good citizen at all times;
- (i) That the Defendant shall not possess or be in control of any **firearms**, ammunition, deadly weapons, explosives or destructive devices including but not limited to black powder weapons, black powder or pyrodex;
- (j) That the Defendant shall not possess or be in control of any **scanners** or other law enforcement monitoring devices while under the supervision of the Department of Corrections;
- (k) That the Defendant shall not possess or consume any alcoholic beverages nor shall he purchase or have purchased any alcoholic beverages or be in any establishment where alcohol is the primary source of sales;
- (l) That the Defendant **shall** submit to random blood, breath and/or urine screening tests for the presence of alcohol and/or drugs at the reasonable request of the Probation Officer without a Search Warrant;
- (m) That the Defendant shall submit to a search of his person, residence **and/or** vehicle at the reasonable request of the Probation Officer without a Search warrant;
- (n) That the Defendant shall have no contact or **communication**, direct or indirect, with the victim of this offense, or any of her extended family members;
- (o) That the Defendant shall repay the costs associated with the jury in the amount of **\$1,527.06** payable to the Clerk of District Court of Ravalli county.
- (p) That the Defendant shall register as a sexual offender pursuant to the Sexual Offender Registration Act, and shall that registration for the balance of his natural life in any location where he resides;
- (q) That the Defendant shall provide a biological sample for DNA analysis to be drawn by a person or entity designated by the **Ravalli County Sheriff**;
- (r) That the Defendant shall be designated as a Level 2 Offender (moderate risk to **reoffend** sexually);

- (s) That the Defendant shall not be involved in any type of employment, service or recreational pursuits or any other activity which involves the supervision of minor children. Under no circumstances should the Defendant be in a position of power and authority over minor children;
- (t) That ~~the~~ Defendant shall not access ~~the~~ Internet, have any pornography in his possession, enter adult bookstores, or enter establishments where nude and/or exotic dancing is promoted;
- (u) That the Defendant shall enroll, participate in and successfully complete a **sexual** offender treatment program **which** has been approved by the Probation Officer, at his own expense, payable **from** the sale of his mobile home;
- (v) That the Defendant shall not associate or communicate, directly or indirectly, with juveniles under the age of 18 **without** a **responsible** adult present (other **than** his wife) who has been approved in advance by the Probation **Officer**;
- (w) That the Defendant shall not attend, frequent or visit places where **children** congregate, i.e., parks, playgrounds, schools;
- (x) That the Defendant shall, within ten (10) days of ~~the~~ date of sentencing, conspicuously post his property with a sign indicating that no children are allowed on his premises by order of this Court and that the Defendant is a convicted sexual offender; the Court reserves jurisdiction to approve the wording and placement of the sign.

IT IS FURTHER ORDERED that the Defendant shall relocate his residence outside the Blue Bird Mobile Home Court within ninety (90) days of the date of sentencing regardless of whether or not ~~the~~ Defendant has sold or leased his mobile home.

IT IS FURTHER ORDERED that the sign set forth in condition (x), may be temporarily removed **from** posting on the Defendant's property during appointments for the showing of the Defendant's property at Blue Bird Mobile Home Court to a prospective buyer. When any such appointment is concluded, the sign shall be immediately replaced in the approved location on the residence.

IT IS FURTHER ORDERED that any bond previously posted is exonerated.

The reasons for the sentence imposed are:

The Defendant is 84 years of age, with a high school education as well as four years of Bible **school**. The Defendant has no prior criminal history of any sort, although he was apparently accused of molesting a child in a similar age group approximately 20 years ago, with no formal charges **filed**. This offense involved an abuse of trust of a neighbor child, who was eight years old at the time of the offense. This offense involved among other things a simulated act of sex with a dog in the presence of the child; and kissing the child on her bare stomach and touching her and rubbing her between her knee and **her hip**. The Court in this case heard the testimony of the victim, and found that testimony credible. It is noted from the evaluation that the Defendant still denies that any of this occurred even though he pled guilty to sexual assault. The degree of suffering of the child victim in this case as well as her **family**, is **documented** by the testimony presented at sentencing by the victim's grandmother. The probation officer, Mr. Hodge, also interviewed family members and noted as a result of those interviews that the victim **in** this case remains frightened to be alone by herself especially at night, and sleeps with her grandmother on a consistent basis out of fear. The victim is afraid to be in her room alone because her room looks out through a window at the Defendant's residence. The victim frequently sees the Defendant in the yard of the Defendant's home. The victim's father **suffered** a series of heart attacks which he attributes **to the** trauma and stress of this process. The victim's grandmother has also suffered stress and concern as a **result** of her granddaughter's victimization. The victim and her family wish the Defendant out of the area where they live.

The plea agreement in this case required that the Defendant not receive a prison sentence if the **psychosexual evaluation** did not recommend a prison sentence, which it does not. **The** report further notes that the Defendant's mobile home has a value of \$18,000, and the Court was informed by the Defendant's counsel at sentencing that the Defendant only recently lowered its listing price to the actual value of the home.

The Defendant has multiple medical problems and issues **that** would become the obligation of the taxpayers **if the** Defendant were in the state prison.

The Court has reviewed the psychosexual evaluation of Dr. Scolatti, **which** is very thorough. The report notes that the Defendant consistently attempted to put the best face on himself and denied any culpability in **what** he did to the child. The report further notes that the Defendant is of normal intelligence, claims no acts of violence or exploitation toward himself as a **child** or any other such **thing** that would tend to make him act out in this fashion. The Court further notes that, in Dr. **Scolatti's**, opinion the Defendant has an ongoing sexual interest in young girls and that because of the Defendant's sexual inadequacy he maintains feelings of anger and powerlessness which could motivate him to act out sexually with a child. The report does recommend a probationary sentence and no unsupervised contact with any female or male children under the age of 16. The report also notes that the Defendant has poor boundaries with children and that **the** Defendant may be getting some sort of sexual arousal through contact with **children**.

The Defendant does not deserve a deferred imposition of sentence. The Court's

preference is to reserve **deferments** for **youthful first time offenders**, not someone of the Defendant's age and supposed maturity.

DONE IN OPEN COURT the 29th day of September, 1999.

DATED this 22nd day of October, 1999.


HON. JEFFREY H. LANGTON, District Judge

I certify that I forwarded copies of
this instrument to counsel of record

10-22-99 GPT-D(3) Skidell
Lebbie Harmon, Clerk

By JR Deputy

COPY

1 DAVID E. STENERSON
Attorney at Law
2 10 South 3rd Street
P.O. Box 210
Hamilton, MT 59840
(406) 363-4060
4 Attorney for Defendant.

6
7 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY
8 STATE OF MONTANA, CAUSE NO. DC 98-175

9 Plaintiff!

10 vs.

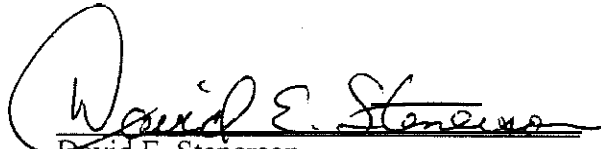
REQUEST FOR. TRANSCRIPT

11 GEORGE HAROLD HOLT,

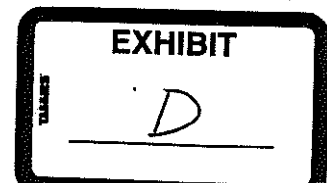
12 Defendant.
13

14 COMES NOW the Defendant, George Harold Holt, by and through his counsel of record
15 David E. Stenerson, and requests an ORDER granting payment to JEFFRIES COURT
16 REPORTING, INC., for preparation of transcript of the sentencing hearing held September 29,
17 1999, for purposes of Sentence Review.

18 DATED this 13th day of October, 1999.


19
20 
21 David E. Stenerson
Attorney for George Harold Holt
22
23
24
25

REQUEST FOR TRANSCRIPT



CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing REQUEST FOR TRANSCRIPT was delivered to the office of the Ravalli County Attorney on the 1 3th day of October, 1999.


Diane K. Stenerson

COPY

1 JEFFREY H. LANGTON
District Judge
2 Twenty-First Judicial District
Ravalli County, Montana
3 Ravalli County Courthouse
Hamilton, MT 59840
4 (406) 375-6241

FILED
DEBBIE HARMON, CLERK

OCT 18 1999

DEPUTY

8 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

9 STATE OF MONTANA,

CAUSE NO. DC-98-175

10 Plaintiff,

ORDER

11 vs.

12 GEORGE HAROLD HOLT,

13 Defendant.

14
15 The Court, having received REQUEST FOR TRANSCRIPT in this Cause. HEREBY
16 ORDERS that transcript of the sentencing hearing held September 29, 1999, shall be prepared
17 by Jeffries Court Reporting, Inc., and that payment for such preparation of said transcript is
18 authorized by this Court to be paid by Ravalli County upon submission of a claim for services.

19 DATED this 15th day of October, 1999.

20 S/ JEFFREY H. LANGTON

21 JEFFREY H. LANGTON
22 District Judge
23
24
25

ORDER



